

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35837

STATE OF IDAHO,)	2009 Unpublished Opinion No. 656
)	
Plaintiff-Respondent,)	Filed: October 27, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOE GUADALUPE ROCHA, JR.,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael R. Crabtree, District Judge.

Appeal from order denying I.C.R. 35 motion for reduction of sentence, dismissed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Joe Guadalupe Rocha, Jr. was charged with three counts of delivery of a controlled substance, two counts of conspiracy to deliver a controlled substance, and two counts of failure to affix a tax stamp. Pursuant to a plea agreement, Rocha pled guilty to two counts of delivery of a controlled substance, Idaho Code, § 37-2732(a)(1)(B), and the state agreed to dismiss the remaining charges. Rocha was sentenced to concurrent unified terms of ten years, with three years determinate and the district court retained jurisdiction. After Rocha completed his rider, the district court suspended the sentences and placed Rocha on probation for three years. Rocha subsequently violated the terms of his probation and the district court revoked his probation and ordered the underlying sentences into execution and again retained jurisdiction. Following the

second period of retained jurisdiction, the district court suspended Rocha's sentences and placed him on probation for three years. Rocha again violated the terms of his probation and the district court revoked Rocha's probation and ordered into execution reduced concurrent sentences of five and one-half years, with one and one-half years determinate. Rocha filed an Idaho Criminal Rule 35 motion seeking further reduction of sentence, which the district court denied. Rocha appeals, contending that the district court abused its discretion by denying his Rule 35 motion, while acknowledging his Rule 35 motion was untimely filed.

Idaho Criminal Rule 35 vests the trial court with jurisdiction to consider and act upon a motion to reduce a sentence filed within fourteen days after the entry of an order revoking probation. I.C.R. 35. The fourteen-day filing limit is a jurisdictional limit on the authority of the trial court to consider a timely motion for reduction of sentence. *State v. Sutton*, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987). Because Rocha's motion was filed more than fourteen days after entry of the order revoking probation, the district court lacked jurisdiction to consider it. Accordingly, the appeal from the order of the district court denying Rocha's Rule 35 motion is dismissed.